

In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 352

JULIA THOMPSON, PETITIONER

v.

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER OF
THE UNITED STATES BUREAU OF EMPLOYEES' COM-
PENSATION, SIXTH COMPENSATION DISTRICT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

MEMORANDUM FOR RESPONDENT DEPUTY COMMISSIONER

Following its earlier decisions in *Ryan Stevedoring Co. v. Henderson*, 138 F. 2d 348 and *American Mutual Liability Ins. Co. v. Henderson*, 141 F. 2d 813, the court below has held that the term "widow", as defined for the purposes of death benefit eligibility in Section 2(16) of the Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424, 33 U.S.C. 901 *et seq.*¹ does not

¹ Section 2(16) of the Act (33 U.S.C. 902 (16) provides that:

The term "widow" includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time.

It is accepted that a woman must be a "widow" as so defined in order to qualify for the death benefits accorded a

encompass petitioner who, although legally married to the deceased longshoreman at the time of his death, (1) had been deserted by the longshoreman twenty-five years prior thereto and (2) had contracted a bigamous marriage while living apart from him. This holding, as the court below recognized, is in conflict with the decisions of the Second and Ninth Circuits in *Associated Operating Co. v. Lowe*, 138 F. 2d 916 and *Moore Dry Dock Co. v. Pillsbury*, 169 F. 2d 988,² which hold in effect that if the legal wife of the longshoreman establishes a separate residence, by reason of her husband's desertion or for "justifiable cause", she comes within the scope of Section 2(16) of the Longshoremen's Act even though she subsequently enters into a bigamous or otherwise illicit relationship with another man.

We have been advised by the Bureau of Employees' Compensation that the question here presented is one of importance not only in the administration of the Longshoremen's Act and the other workmen's compensation schemes adopting its provisions,³ but also in the administration of the Fed-

"surviving wife" by Section 9(b) of the Act (33 U.S.C. 909(b)). *Weeks v. Behrend*, 135 F. 2d 258 (C.A.D.C.); *Moore Dry Dock Co. v. Pillsbury*, 169 F. 2d 988 (C.A. 9); *Williams v. Lawson*, 35 F. 2d 346 (C.A. 5).

² In the *Moore Dry Dock* case, the Ninth Circuit said of the previous decisions of the Fifth Circuit on this point: "To the extent that these decisions support appellants' contention, we deem them erroneous and decline to follow them". 169 F. 2d at 990.

³ The Longshoremen's Act serves as the workmen's compensation statute of the District of Columbia. Act of May 17, 1928, c. 612, § 1, 45 Stat. 600, D. C. Code (1951) § 36-501. In addition, it is applicable at present to civilian employment

eral Employees' Compensation Act, 39 Stat. 742, as amended, 5 U.S.C. 751 *et seq.*, which in Section 10(H) (5 U.S.C. 760(H)) defines "widow" in almost identical terms. And the conflict in decisions necessitates, as here, the denial of death benefits by Deputy Commissioners within the bounds of the Fifth Circuit in circumstances where Deputy Commissioners having jurisdiction over many of the active east and west coast ports are obliged to act favorably on the surviving wife's claim. There is nothing in either the Longshoremen's Act or its legislative history to justify this lack of uniformity.⁴

For these reasons, review by this Court of the decision below appears warranted. We do not, therefore, oppose the granting of the petition.

Respectfully submitted,

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Acting Solicitor General.

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at military, air, and naval bases outside the United States. Act of August 16, 1941, c. 357, § 1, 55 Stat. 622, as amended, 42 U.S.C. 1651.

⁴ The Social Security Act expressly provides that an applicant's status as the wife of the deceased employee is to be determined by reference to state law. Act of August 28, 1950, c. 809, Title I, § 104(a), 64 Stat. 511, 42 U.S.C. Supp. V, 416(h) (1). While the Longshoremen's Act is silent in this respect, it has been judicially interpreted as if it contained such a provision. *Bolin v. Marshall*, 76 F. 2d 668 (C.A. 9). As has been universally recognized, however, the legal wife's entitlement to benefits under the Longshoremen's Act presents a federal question—namely the construction of § 2(16) of the Act. See cases cited in text pp. 1-2 *supra*.